

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1555 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.

LALIT MOHANBHAI PATEL

Versus

HINDUSTAN EARTHMOVERS LIMITED

Appearance:

MR RK MISHRA for Petitioners
MR BH CHHATRAPATI for Respondent No. 1
MR YOGESH S LAKHANI for Respondent No. 2
RULE UNSERVED for Respondent No. 3
RULE SERVED for Respondent No. 4
SERVED BY RPAD - (N) for Respondent No. 5
MR VIMAL S SHAH for Respondent No. 7
MR BG JANI for Respondent No. 8

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/08/1999

ORAL JUDGEMENT

Notice was issued to the respondents for
admission and disposal of this revision application at
the admission stage. Hence, this revision application is

being disposed of final at the admission stage.

2. This revision application has been preferred against the order dated 7-10-1998 passed by the Civil Judge (SD), Vadodara in Special Civil Suit No. 692/97 whereby the application moved on behalf of the petitioners - plaintiffs through the respondent no. 8 the power of attorney holder was allowed and the names of the defendants, 1, 3, 4, and 5 were ordered to be deleted from the plaint exh. 1 and the application exh. 5 for interim relief.

3. The suit was filed for specific performance against the respondents no. 1, 2 and 3 and temporary injunction was sought for and that interim injunction application was rejected by the trial Court on 5-3-1998. The petitioner filed Appeal From Order No. 141/98 in this Court and that appeal was dismissed and the order of the trial court was rejecting the application exh. 5 was maintained. Special Leave Petition was preferred before the Supreme Court of India and the Special Leave Petition was permitted to be withdrawn and the Special Leave Petition was dismissed as withdrawn by the order dated 11-7-1999.

4. Learned counsel for the petitioner submitted that the respondent no. 8 in whose favour power of attorney was executed was only authorized to watch the proceedings of the suit. But he had no authority to move any application for deleting the parties. The action of the power of attorney holder in moving the application for deleting the parties was prejudicial to the interest of the petitioners and hence it was not a lawful act within the scope of Section 188 and 189 of the Contract Act. The impugned order was passed without calling upon the petitioners and without verifying the fact that the respondent no. 8 had power to move the application for deleting the parties or not and therefore that impugned order passed by the Court below and the illegal act of the power of attorney holder - respondent no. 8 is illegal and without jurisdiction. The petitioners authorized the power of attorney holder to the extent that he will watch the court proceedings in respect of Special Civil Suit No. 692/97 and he will remain present on the date fixed and he will engage advocates and determine the fees of the advocates. He was also authorized to remain present in the Government Offices, such as Collector, Mamlatdar, Talati, and Panchayat in connection with the land which was agreed to be purchased by the plaintiffs. The respondent no. 8 engaged another counsel without taking consent of Mr. Majmudar who had

not retired. The power of attorney was not competent to engage any other counsel and to move an application and those acts were illegal within the meaning of Section 188 and 189 of the Contract Act. On the contrary, the learned counsel for the respondents submitted that the petitioner filed Special Civil Suit No. 692/97 on 18-10-1997 for specific performance in connection with the agreement to sell dated 1-11-1996 and the application for interim injunction against the respondents was rejected by the trial court on 5-3-1998. The trial court did not find any prima facie case for granting temporary injunction. The petitioners filed Appeal From Order No. 141/98 which was dismissed on 4-5-1998 by this Court. The petitioners also preferred Special Leave Petition before the Supreme Court which was also dismissed as withdrawn on 11-7-1999. The respondent no. 8 invested the huge amount in the partnership firm of the petitioners and he joined himself as a partner of the partnership firm. The petitioners executed irrevocable power of attorney on 22-12-1997 in favour of the respondent no. 8 Mr. Mashribhai Naranbhai Ahir and admitted him as a partner of the firm authorizing him with the responsibility of attending and looking after the litigations pending in the court, engaging advocates and determining their fees etc. and also attending the Government offices such as Collector, Mamlatdar, Talati, Panchayat in connection with the aforesaid litigations. The Memorandum Of Understanding was also reduced into writing on 22-10-97 by all the partners of the firm including the petitioners. The respondent no. 8 was admitted as a partner and the responsibility of attending the court was handed over to the respondent no. 8 Mr. Ahir and all the decisions taken by him will be acceptable and binding to all the remaining partners. He considering the facts and circumstances of the case decided to move an application for deleting the unnecessary parties in the suit and hence he moved the application on 5-10-97 for this purpose before the trial court and the court below decided and allowed the said application that was moved on behalf of the petitioners on 5-10-97 for deleting the defendant no. 1, 3, 4 and 5 from the array of the parties in the suit plaint exh. 1 as well as the application exh. 5. The learned counsel for the respondent submitted that the petitioners are barred by doctrine of promissory estoppel to challenge the action of the respondent no. 8 their power of attorney and partner of the firm and the order passed by the court. Under Order 3 Rule 1 and 2 of the Civil Procedure Code, any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may except where otherwise

expressly provided by any law for the time being in force, be made, or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting as the case may be on his behalf. Under Rule 2 of Order 3 of the Civil Procedure Code, the recognized agent of parties is meant the persons by whom such appearances, applications and acts may be made or done are - persons holding powers of attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties. Accordingly to the provisions of Section 4 and 18 of the Indian Partnership Act, a partner is the agent of the firm for the purpose of the business of the firm. Section 19 of the Indian Partnership Act provides that the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. As such the act done by the partner for the purpose of the business or authorized thereafter is the act which will be deemed to be an act done by the firm and that act would be binding on the other partners of the firm.

5. The respondent no. 8 has been entrusted with the responsibility to look after the suit proceedings and to do any act meaning the needful therefor. Even the respondent no. 8 is not authorized by the irrevocable power of attorney, he is entitled to work as partner of the firm and his act would be binding on the firm of the petitioners. Thus, the act done by the power of attorney as partner of the firm for the purpose of the business of the firm will be binding on the firm. Learned counsel for the respondents relied on the decision of this Court in the case of Her Highness Shantadevi Pratapsingh Rao Gaekwad Vs. Savjibhai H. Patel, reported in 1998 (2) G.L.R., 1521 wherein it has been held that where an agency is coupled with interest cannot be revoked. Therefore, irrevocable power of attorney cannot be revoked as the irrevocable power of attorney holder has interest in the partnership which cannot be revoked in any circumstances.

6. The learned counsel for the respondents also pointed out that power of attorney executed in favour of the respondent no. 8 by the petitioner has not yet been revoked and still it is in existence. Thus, this Court below has not committed any illegality in passing the impugned order and hence the revision application deserves to be dismissed.

7. I have given my anxious thoughts on the submissions made on behalf of the parties. Once the application on behalf of the petitioners by the

respondent no. 8 holding power of attorney was moved for deleting the parties from the array of the plaint of the suit as well as in the application exh. 5. the Court has option except to entertain that application and the Court is not required under the law to call upon the plaintiffs and verify the power of attorney whether the power of attorney holder is justified or not. Even from the power of attorney it appears that the respondent no. 8 was authorized with the responsibility of remaining presents in the courts on the dates, engaging the advocates, determining the advocates' fees etc. and to remain present in the Government offices. The respondent no. 8 has not to remain present not as a spectator but he has been assigned with the responsibility to do needful acts in the circumstances of the case. He was also authorized to sign on behalf of the petitioners' in the application or proceedings. Meaning thereby that the respondent no. 8 was looking after the proceedings of the suit not as a spectator but as an authorized agent on behalf of the petitioners. It is not disputed that the irrevocable power of attorney and memorandum of understanding have been executed on the same day authorizing the respondent no. 8 with the responsibility of settling the matters relating to the litigations pending in the Court. All the decisions taken by him have been made acceptable and binding to all the remaining partners. Prima facie on the basis of these two documents it appears that the respondent no. 8 was holding the power of attorney to do all the acts in the litigations in connection with the land sought to be purchased. Thus, prima facie on the basis of the application, irrevocable power of attorney and memorandum of understanding, it appears that the respondent no. 8 was authorized to do anything on behalf of firm. So far as engagement of a new counsel is concerned, it is mentioned in the application dated 5-10-98 for permitting him to present a new vakalatnama without relieving the advocate already engaged by them previously. It is pointed out that Mr. Majmudar who was an advocate engaged by the petitioners was hospitalised and he was not available hence the lady advocate was engaged for moving the application on behalf of the plaintiffs petitioners. This fact is not refuted by the learned counsel for the petitioners. It is also pointed out that the respondents no. 2, 6 and 7 were responsible to execute the agreement to sell were not sought to be deleted from the array of the parties. The respondent no. 2 executed the agreement to sell in his personal capacity and not as a Director of the Company that has been shown from the judgment of this Court dated 5-5-98 passed in the Appeal From Order No.141 of 1997. If the

person having the power of attorney and being a partner moves an application before the court concerned for deleting certain unnecessary parties from the array of the parties, the Court cannot refuse to entertain such application. If such application has been entertainable and appropriate order has been passed after considering the materials on record for which the Court below has jurisdiction, this Court should not interfere with the discretion exercised by the Court below. Revisional jurisdiction should not be invoked to correct the errors of certain facts committed by the Court below, if the Court below has jurisdiction to exercise it.

8. Considering the facts and circumstances of this case, I do not find any reasonable ground for calling interference in the revisional jurisdiction under Section 115 of the Civil Procedure Code. Accordingly, this revision application is dismissed at admission stage. Rule is discharged, with no order as to costs. Interim relief, if any stands vacated.

9. The Vadodara Municipal Corporation would be at liberty to take action in accordance with law against any of the parties. The concerned party may approach before the Municipal Commissioner, Vadodara Municipal Corporation in that regard for their grievances.

-0-0-0-0-0-

/JVSatwara/